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UNITED STATES OF AMERICA,

Plaintiffs, and

THE CHEMCLENE SITE DEFENSE

GROUP,

Intervenors/ Plaintiffs,

v.

CHEMCLENE CORPORATION, INC.,

W. LLOYD BALDERSTON,

THE ESTATE OF RUTH BALDERSTON,

and SPRINGRIDGE MANAGEMENT

CORPORATION.

Defendants.

Civil Action No. 99-CV-3715

1 Site is attached hereto as Appendix "A."

2 C. Defendants named in the complaint are Chemclene Corporation, Inc. ("Chemclene"),
3 Springridge Management Corporation, Inc. ("Springridge"), W. Lloyd Balderston, and the Estate
4 of Ruth Balderston, (collectively referred to herein as "Settling Defendants").

5 D. The "Chemclene Site Defense Group" or "CSDG" are Intervenor/Plaintiffs in this
6 matter. The CSDG have asserted claims in this matter against Settling Defendants pursuant to
7 Section 113 of CERCLA, inter alia, seeking contribution from Settling Defendants with regard to
8 response costs incurred by the CSDG in connection with the Site.

9 E. By entering into this Consent Decree, Settling Defendants do not admit any liability to
10 the United States and/or the CSDG arising out of the conditions at the Site and/or the
11 transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or
12 threatened release of hazardous substances at or from the Site constitutes an imminent or
13 substantial endangerment to the public health or welfare or the environment.

14 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the
15 National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal
16 Register on September 8, 1983, 48 Fed. Reg. 40658.

17 G. In response to an alleged release or a substantial threat of a release of hazardous
18 substances at or from the Site, in 1996, EPA commenced a Remedial Investigation and
19 Feasibility Study for the Site pursuant to 40 C.F.R. § 300.430. EPA issued a Remedial
20 Investigation Report in January 1997, and a Feasibility Study Report in June 1997.

21 H. EPA published notice of and provided a public comment period with regard to a

1 Proposed Plan for the Site pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617 on June 23,
2 1997. A Final Plan for the Site was published by EPA in accordance with Section 117(b) of
3 CERCLA, and a Record of Decision (“ROD”) for the Site, pursuant to which EPA selected the
4 remedial action to be implemented at the Site, was issued by EPA on November 26, 1997. The
5 ROD included, among other things, certain Institutional Controls that EPA deemed necessary to
6 protect public health and the environment. EPA issued a ROD Amendment on March 17, 2005.
7 A true and correct copy of the ROD is attached hereto as Appendix “B.”

8 I. EPA has identified and provided notices of liability to a number of potentially
9 responsible parties (“PRPs”) that EPA believes may be liable pursuant to Section 107 of
10 CERCLA for response costs incurred in connection with the Site.

11 J. In May 1998, EPA issued an Administrative Order for Remedial Action, Docket No.
12 III-98-070-DC, (“Remedial Action Order”) to Chemclene, W. Lloyd Balderston, and Ruth
13 Balderston (collectively, “Remedial Action Order Respondents”). Pursuant to the Remedial
14 Action Order, the Remedial Action Order Respondents, among other things, agreed to perform
15 work items identified and required by EPA and enumerated in the Remedial Action Order, at the
16 Site. The Remedial Action Order, among other things, included certain response actions
17 described in the ROD. By letter dated September 27, 2001, EPA certified that the Remedial
18 Action Order Respondents satisfied their obligations under the Remedial Action Order.

19 K. EPA issued an Administrative Order for Removal Response Action, Docket No. III-99-
20 033-DC (“Removal Order”), to Settling Defendants Chemclene and Lloyd Balderston
21 (collectively, “Removal Order Respondents”), in August 1999, pursuant to which Removal Order

1 Respondents were required to conduct certain removal activities, as enumerated in the Removal
2 Order, at the Site in response to an August 1999 fire that occurred at the Site. The Removal
3 Order Respondents satisfied their obligations under the Removal Order in December 2002.

4 L. Pursuant to an Administrative Order on Consent for *De Minimis* Settlement, U.S. EPA
5 Docket No. III-98-074-DC (“*De Minimis* AOC I”), the United States entered into a settlement,
6 effective September 1999, with approximately 158 PRPs that the United States identified as *de*
7 *minimis* PRPs (hereinafter referred to as “*De Minimis* AOC I Settlers”) at the Site.

8 M. In addition, the United States and the Commonwealth of Pennsylvania entered into a
9 Consent Decree with approximately 36 parties, most of which settlers comprise the CSDG,
10 pursuant to which those settling parties, inter alia, agreed to perform the remedial design and
11 remedial action selected for the Site, as set forth in the ROD. The Consent Decree, which was
12 entered by this Court on December 13, 1999 (United States v. Action Manufacturing, et al., Civil
13 Action No. 99-4402), shall hereinafter be referred to as the “Remedial Design/Remedial Action
14 Consent Decree” or the “RD/RA Consent Decree.”

15 N. Pursuant to an Administrative Order on Consent for *De Minimis* Settlement, U.S. EPA
16 Docket No. CERCLA-03-2001-0381 (“*De Minimis* AOC II”), the United States entered into a
17 second round *de minimis* settlement, effective June 13, 2002, with 9 PRPs that the United States
18 identified as *de minimis* PRPs (hereinafter referred to as “*De Minimis* AOC II Settlers”) at the
19 Site. The United States entered into a third-round *de minimis* settlement, Administrative Order
20 on Consent for *De Minimis* Settlement, U.S. EPA Docket No. CERCLA-03-2003-0041 (“*De*
21 *Minimis* AOC III”), effective January 6, 2005, with 25 *de minimis* PRPs.

O. The Parties recognize that this Consent Decree is intended to memorialize a settlement of claims by and between the United States and the Settling Defendants. In addition, Settling Defendants and the CSDG represent that they have entered into a separate settlement and confidential agreement regarding the CSDG's claims asserted against the Settling Defendants in this matter (hereinafter referred to as the "Confidential CSDG/Settling Defendants Agreement"). Settling Defendants and the CSDG represent that the Confidential CSDG/Settling Defendants Agreement is a fair and reasonable settlement that was negotiated at arms' length, and that the consideration received from Settling Defendants is a reasonable resolution of the CSDG's claims against the Settling Defendants.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. For the purposes of this Consent Decree and the underlying complaints, the CSDG and Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The CSDG and Settling

1 Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to
2 enter and enforce this Consent Decree.

3 **III. PARTIES BOUND**

4 2. This Consent Decree applies to and is binding upon the United States, the CSDG, and
5 Settling Defendants and their heirs, successors and assigns. Any change in ownership or
6 corporate status of a CSDG member or a Settling Defendant including, but not limited to, any
7 transfer of assets or real or personal property, shall in no way alter such party's responsibilities
8 under this Consent Decree.

9 **IV. DEFINITIONS**

10 3. Unless otherwise expressly provided herein, terms used in this Consent Decree which
11 are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning
12 assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in
13 this Consent Decree or in the appendices attached hereto and incorporated hereunder, the
14 following definitions shall apply:

15 "Agreement and Certification of Successor in Interest and Assign" shall mean the agreement
16 attached as Appendix "C."

17 "Best Efforts," when used in connection with the Sale of the Springridge Property, as such
18 term is defined herein, shall be those activities as described in Paragraph 24 of this Consent
19 Decree.

20 "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and
21 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

1 “Chemclene Property” shall mean that property located in East Whiteland Township,
2 Chester County, consisting of approximately 5 acres, as described in Appendix “D” of this
3 Consent Decree.

4 “Closing of the Sale of Chemclene Property” shall mean that transaction at which the
5 consideration for the Chemclene Property is paid and title to the Chemclene Property is
6 transferred.

7 “Closing of the Sale of Ruth Balderston Site Property” shall mean that transaction at which
8 the consideration for the Ruth Balderston Site Property is paid and title to the Ruth Balderston
9 Site Property is transferred.

10 “Closing of the Sale of Springridge Property” shall mean that transaction at which the
11 consideration for the Springridge Property is paid and title to the Springridge Property is
12 transferred.

13 “Collateral Properties” shall mean the Chemclene Property, as described in Appendix “D”
14 and the Ruth Balderston Collateral Property as described in Appendix “E” of this Consent
15 Decree.

16 “Confidential CSDG/Settling Defendants Settlement” shall mean the unfiled, separate
17 settlement between the CSDG and the Settling Defendants regarding the CSDG’s claims asserted
18 against the Settling Defendants in this matter. The United States shall not be bound by any of the
19 terms in the Confidential CSDG/Settling Defendants Settlement. In the event of a conflict
20 between the terms of the Confidential CSDG/Settling Defendants Settlement and of this Consent
21 Decree, this Consent Decree shall control.

1 “Consent Decree” shall mean this Decree and all appendices attached hereto (listed in
2 Section XXV). In the event of conflict between this Decree and any appendix, this Decree shall
3 control.

4 “CSDG” or the “Chemclene Site Defense Group” shall mean the following entities for
5 purposes of this Consent Decree: Action Manufacturing Company, Alcoa Inc., Armstrong World
6 Industries, Inc., Barker Pipe Fittings Company, Beckett Company, L.P., Bulova Technologies,
7 LLC, Cabot Corporation, Chemetall Foote Corporation, Delbar Products, Inc., Eldredge, Inc.,
8 Fischer & Porter Company, General Electric Company, General Motors Company, Hamilton
9 Precision Metals, Inc., Hamilton Watch Company, Handy & Harman Tube Company, Hercules
10 Inc., Kim Manufacturing Co., L-3 Communications, LaFrance Corporation, Lucent
11 Technologies, Inc., Moore Products Co., Morning Call, Inc., Plymouth Tube Company, Porter
12 Instrument Company, Inc., PP&L, Inc., Reilly Plating Company, Inc., Rex Heat Treat- Lansdale,
13 Inc., Sunroc Corporation, Syntex, Inc., Tyco Electronics Corporation (AMP Incorporate), Unisys
14 Corporation, USG Corporation, Vishay Intertechnology, Inc., and VIZ Liquidation Trust.

15 “CSDG Future Costs Payment Obligations” shall mean payment obligations of the CSDG
16 and other RD/RA Consent Decree Settlers, as set forth in Paragraph 67 of the RD/RA Consent
17 Decree.

18 “CSDG Interim Costs Payment Obligations” shall mean payment obligations of the CSDG
19 and other RD/RA Consent Decree Settlers, as set forth in Paragraph 67 of the RD/RA Consent
20 Decree.

21 “CSDG Work” shall mean work the CSDG and other RD/RA Consent Decree Settlers are

1 required to perform pursuant to the RD/RA Consent Decree.

2 "Day" shall mean a calendar day unless expressly stated to be a working day. "Working
3 Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any
4 period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday,
5 or Federal holiday, the period shall run until the close of business of the next working day.

6 "*De Minimis* AOC I" shall mean Administrative Order on Consent for *De Minimis*
7 Settlement, U.S. EPA Docket No. III-98-074-DC ("*De Minimis* AOC I"), relating to the Site,
8 which was effective September 1999.

9 "*De Minimis* AOC II" shall mean Administrative Order on Consent for *De Minimis*
10 Settlement, U.S. EPA Docket No. CERCLA-03-2001-0381 ("*De Minimis* AOC II"), relating to
11 the Site, which was effective June 13, 2002.

12 "*De Minimis* AOC III" shall mean the proposed Administrative Order on Consent for *De*
13 *Minimis* Settlement, U.S. EPA Docket No. CERCLA-03-2003-0041 ("*De Minimis* AOC III"),
14 relating to the Site, which was effective January 6, 2005.

15 "Duly Authorized Representative" shall mean a person set forth or designated in accordance
16 with the procedures set forth in 40 C.F.R. § 270.11(b).

17 "Effective Date" shall be the effective date of this Consent Decree as provided in Section
18 XXIII of this Consent Decree.

19 "EPA" shall mean the United States Environmental Protection Agency and any successor
20 departments or agencies of the United States.

21 "Existing Contamination," when used in the context of the Springridge Property, the

Chemclene Property, or the Ruth Balderston Site Property, shall mean:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Springridge Property, the Chemclene Property, or the Ruth Balderston Site Property, as such property is defined herein, as of the date of the Closing of the Sale of the Springridge Property, the Chemclene Property, or the Ruth Balderston Site Property;

b. any hazardous substances, pollutants or contaminants that have migrated from the Springridge Property, the Chemclene Property, or the Ruth Balderston Site Property, prior to the date of the Closing of the Sale of the Springridge Property, the Chemclene Property, or the Ruth Balderston Site Property; and

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Springridge Property, the Chemclene Property, or the Ruth Balderston Site Property, after the date of the Closing of the Sale of the Springridge Property, the Chemclene Property, or the Ruth Balderston Site Property.

“Future *De Minimis* Settlements” shall mean any settlements entered into by and between the United States and any Malvern Site *de minimis* PRP, pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), including the *De Minimis* AOC III. The term “Future *De Minimis* Settlements” as used in the Consent Decree does not include the *De Minimis* AOC I and *De Minimis* AOC II.

“Hazardous Substances” shall mean any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and/or under Section 103 of HSCA, 35 P.S. § 6020.103.

“Interest” shall mean interest at the rate specified for interest on investments of the

1 Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on
2 October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest
3 shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change
4 on October 1 of each year.

5 “Intervenors/Plaintiffs” shall mean the CSDG.

6 “Institutional Controls” shall mean land and/or water use restrictions including, but not
7 limited to, restrictions in the form of contractual agreements, restrictive easements/covenants that
8 run with the land, and governmental controls, as set forth more fully in the Record of Decision
9 issued by EPA in November 1997, including any ROD amendment or Explanation of Significant
10 Differences (“ESDs”), in connection with the Site, and in Section X of this Consent Decree.

11 “Matters Addressed as to Claims against Settling Defendants” shall mean all response
12 actions taken or to be taken and all response costs incurred or to be incurred by the United States
13 or any other person with respect to the Site. “Matters Addressed as to Claims against Settling
14 Defendants” in this settlement do not include those response costs or response actions as to
15 which the United States has reserved its rights under this Consent Decree (except for claims for
16 failure to comply with this Decree), in the event that the United States asserts rights against
17 Settling Defendants coming within the scope of such reservation.

18 “Matters Addressed as to Claims against Successors in Interest or Assigns” shall mean all
19 response actions taken or to be taken and all response costs incurred or to be incurred by the
20 United States or any other person with respect to Existing Contamination. “Matters Addressed
21 as to Successors in Interest or Assigns” do not include those response costs or response actions as

1 to which the United States has reserved its rights under this Consent Decree, in the event that the
2 United States asserts rights against Successors in Interest or Assigns coming within the scope of
3 such reservation.

4 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous
5 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42
6 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

7 “Net Proceeds” of the sale of the Springridge Property and/or Collateral Properties or the
8 Ruth Balderston Site Property shall be calculated by subtracting from the purchase price the
9 following costs:

- 10 a. reasonable real estate agent commissions (including advertising costs), if any;
- 11 b. any recording fees;
- 12 c. any transfer taxes; and
- 13 d. reasonable attorney fees related solely to the Closing.

14 Notwithstanding the foregoing, in calculating the “Net Proceeds,” no deductions or offsets
15 shall be made for costs incurred in payment of any liens, including tax liens, or other
16 encumbrances on the property.

17 “Owner Settling Defendants” shall mean those Settling Defendants that own Site Parcels.

18 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or
19 an upper case letter.

20 “Parties” shall mean the United States, the CSDG, and the Settling Defendants.

21 “Plaintiff” shall mean the United States.

1 “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq.
2 (also known as the Resource Conservation and Recovery Act).

3 “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site
4 signed on November 26, 1997, by Abraham Ferdas, Acting Director, Hazardous Waste
5 Management Division, EPA Region III, and all attachments thereto. The ROD is attached as
6 Appendix “B,” and shall be deemed to include any ROD amendments or ESDs.

7 “Remedial Action” shall mean those activities, except for Remedial Design and Operation
8 and Maintenance, to be undertaken by the CSDG and/or Settling Defendants to implement the
9 ROD, in accordance with the final Remedial Design and Remedial Action Work Plans and other
10 plans approved by EPA in consultation with PADEP.

11 “Remedial Design” shall mean those activities to be undertaken by the CSDG and/or
12 Settling Defendants to develop the final plans and specifications for the Remedial Action
13 pursuant to the Remedial Design Work Plan.

14 “Remedial Design/Remedial Action Consent Decree” or “RD/RA Consent Decree” shall
15 mean the Consent Decree entered into by the United States and approximately 35 potentially
16 responsible parties (“RD/RA Settlers”), most of which comprise the CSDG, in connection with
17 the Site. Pursuant to the RD/RA Consent Decree, which was entered by this Court on December
18 13, 1999, (United States v. Action Manufacturing, et al., Civil Action No. 99-4402), the RD/RA
19 Settlers agreed, inter alia, to perform the Remedial Design and Remedial Action relating to the
20 Site, as more fully described in the RD/RA Consent Decree.

21 “Remedial Design/Remedial Action Settlers” or “RD/RA Settlers” shall mean the

1 PRPs/signatories, including members of the CSDG, to the Remedial Design and Remedial
2 Action Consent Decree.

3 “Response Costs” shall mean all costs of "response" as that term is defined by Section
4 101(25) of CERCLA, 42 U.S.C. § 9601(25), with respect to the Site.

5 “Ruth Balderston Collateral Property” shall mean that property described in Appendix “E”
6 of this Consent Decree.

7 “Ruth Balderston Site Property” shall mean that property described in Appendix “F” of this
8 Consent Decree.

9 “Sale of the Springridge Property” shall mean the execution of an Agreement of Sale of the
10 Springridge Property between Springridge (as seller) and the buyer. Sale of any other property
11 referred to in this Consent Decree shall mean the execution of an Agreement of Sale of the
12 referenced property between the seller and the buyer.

13 “Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

14 “Settling Defendants” shall mean Chemclene Corporation, Inc. (“Chemclene”), Springridge
15 Management Corporation (“Springridge”), W. Lloyd Balderston, and the Estate of Ruth
16 Balderston.

17 “Site” shall mean the Malvern TCE Superfund Site, including areas defined in 40 C.F.R. §
18 300.400(e), located at and around 258 N. Phoenixville Pike in Malvern, Chester County,
19 Pennsylvania and depicted more clearly on the map attached as Appendix “A.”

20 “Site Parcels” shall mean the Springridge Property, the Chemclene Property and the Ruth
21 Balderston Site Property.

1 “Springridge Property” shall mean that property located in East Whiteland and Charlestown
2 Townships, Chester County, consisting of approximately 142.9 acres, as described in Appendix
3 “G” of this Consent Decree.

4 “Successor in Interest or Assign” shall mean any person who:

- 5 a. acquires an interest in the Springridge Property, the Chemcene Property, or the
6 Ruth Balderston Site Property;
- 7 b. signs an Agreement and Certification of Successor in Interest or Assign,
8 attached as Appendix “C” hereto, that is approved and signed by EPA; and
- 9 c. meets all conditions set forth in the Agreement and Certification of Successor in
10 Interest or Assign.

11 “United States” shall mean the United States of America and all of its departments, agencies,
12 and instrumentalities.

13 “Waste Material” shall mean:

- 14 a. any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §
15 9601(14);
- 16 b. any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C.
17 § 9601(33);
- 18 c. any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and
- 19 d. any “hazardous substance” under Section 103 of HSCA, 35 P.S. § 6020.103.

20 **V. GENERAL PROVISIONS**

21 **4. Objectives of the Parties**

1 The objectives of the Parties in entering into this Consent Decree, inter alia, are to
2 reimburse response costs of the Plaintiff and Intervenor/Plaintiffs and to resolve the claims of
3 Plaintiff and Intervenor/Plaintiffs against Settling Defendants as provided in this Consent
4 Decree.

5 5. Commitments by Settling Defendants

6 a. Settling Defendants shall perform all obligations of Settling Defendants as set
7 forth and/or referred to in this Consent Decree, including, but not limited to, reimbursing, to the
8 extent provided in this Consent Decree, response costs of the United States and the CSDG in
9 connection with the Site.

10 b. The obligations of Settling Defendants under this Consent Decree are joint and
11 several. In the event of the insolvency or other failure of any one or more Settling Defendants to
12 implement the requirements of this Consent Decree, the remaining Settling Defendant(s) shall
13 complete all such requirements.

14 c. In the event that any of the Settling Defendants files for bankruptcy or is placed
15 involuntarily in bankruptcy proceedings, such Settling Defendants shall notify the United States
16 within three (3) working days of such filing.

17 6. Notice of Obligations to Successors-in-Title

18 a. Notice of Use Restrictions

19 With respect to the Springridge Property and the Ruth Balderston Site
20 Property, within fifteen (15) days after the entry of this Consent Decree, Owner Settling
21 Defendants shall file for each a notice, in the form of that attached as Appendix "H," with the

Recorder's Office, Chester County, Commonwealth of Pennsylvania, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on November 26, 1997, that potentially responsible parties have entered into an RD/RA Consent Decree requiring implementation of the remedy, that the Owner Settling Defendants have entered into this Consent Decree relating to the Site, and identifies the United States District Court in which the RD/RA Consent Decree and this Consent Decree were filed, the name and civil action numbers of the actions in which the RD/RA Consent Decree and this Consent Decree were filed, and the dates the RD/RA Consent Decree and this Consent Decree were entered by the Court. The notices required in this Paragraph shall also provide notice of use restrictions relating to the property, as described in Appendix "H," and as referred to in Paragraph 47.b. of this Consent Decree. Owner Settling Defendants shall use their best efforts to record the notices within fifteen (15) days of the effective date of this Consent Decree. Owner Settling Defendants may request from EPA an extension of this filing deadline, if, notwithstanding Owner Settling Defendants' best efforts, Owner Settling Defendants are unable to file the notices within this fifteen (15) day period, but such request for an extension will not exceed an additional twenty (20) days. Owner Settling Defendants shall provide EPA with a certified copy of the recorded notices within ten (10) days of recording such notice(s).

b. At least thirty (30) days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, Owner Settling Defendants shall give the grantee written notice of (i) the RD/RA Consent Decree, (ii) this Consent Decree, (iii) any instrument by which an interest in real

1 property has been conveyed that confers a right of access to the Site (hereinafter referred to as
2 “access easements”) pursuant to Section X (Access and Institutional Controls), and (iv) any
3 instrument by which an interest in real property has been conveyed that confers a right to enforce
4 restrictions on the use of such property (hereinafter referred to as “restrictive easements”)
5 pursuant to Section X (Access and Institutional Controls). At least thirty (30) days prior to such
6 conveyance, the Owner Settling Defendant conveying the interest shall also give written notice to
7 EPA and the Commonwealth of the proposed conveyance, which notice shall include the name
8 and address of the grantee and the date on which notice of the RD/RA Consent Decree and this
9 Consent Decree, access easements, and/or restrictive easements was given to the grantee.

10 c. In the event of any such conveyance, the Owner Settling Defendant's obligations
11 under this Consent Decree, including, but not limited to, its obligation to provide or secure access
12 and Institutional Controls, as well as to abide by such Institutional Controls, pursuant to Section
13 X (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the
14 Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the
15 liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree,
16 absent the prior written consent of EPA. If the United States approves, the grantee may perform
17 some or all of the obligations under this Consent Decree. The United States agrees that Owner
18 Settling Defendant's obligations with regard to Access and Institutional Controls (Section X)
19 may be assumed and performed by a buyer or grantee of the property that is located within the
20 Site and Owner Settling Defendant shall be released of such obligations provided: i) any such
21 conveyance by Owner Settling Defendant includes an Agreement and Certification of Successor

in Interest or Assign as set forth in Appendix "C" of this Consent Decree that has been signed by a buyer or grantee and has been approved in writing by EPA; and ii) Owner Settling Defendant does not retain any interest or control in the property.

7. Ruth Balderston Collateral Property Mortgage and Promissory Note

Within fifteen (15) days after the entry of this Consent Decree, Settling Defendants shall file a mortgage and promissory note, copies of which are attached as Appendix "I," with the Recorder's Office, Chester County, Commonwealth of Pennsylvania, pursuant to which Settling Defendants shall grant to the United States a mortgage to secure the Settling Defendants' obligation to pay to the United States the amounts set forth in Paragraphs 8, 9, 10 and 16 of this Consent Decree from net proceeds from the sale of the Ruth Balderston Collateral Property. Settling Defendants shall use their best efforts to record the mortgage and promissory note within fifteen (15) days of the effective date of this Consent Decree. Settling Defendants may request from EPA an extension of this filing deadline, if, notwithstanding the Settling Defendants' best efforts, Settling Defendants are unable to file the mortgage and promissory note within this fifteen (15) day period, but such request for an extension will not exceed an additional twenty (20) days. Settling Defendants shall provide EPA with a certified copy of the recorded mortgage and promissory note within ten (10) days of recording such notice(s).

VI. PAYMENT OBLIGATIONS OF SETTling DEFENDANTS

8. Settling Defendants commit to pay to the United States the sum of \$1,417,200.00, plus any Interest that may accrue thereon, subject to the terms provided in this Consent Decree.

1 9. To fulfill their obligations under Paragraph 8 of this Consent Decree, Settling
2 Defendants have the option of making payment either: a) from Net Proceeds obtained through the
3 Sale of the Springridge Property; plus, to the extent required under this Consent Decree
4 additional monies obtained from the Sale of Collateral Properties and the Ruth Balderston Site
5 Property; or b) by a lump sum cash payment, as provided in Paragraph 13 of this Consent
6 Decree. Payment to the United States shall have priority over payments to be made to any other
7 party from the Net Proceeds of sale of the Springridge Property, including priority over any
8 payments to be made pursuant to the Confidential CSDG/Settling Defendants Settlement.

9 10. The settlement amount to be paid by Settling Defendants, as referred to in Paragraph 8
10 of this Consent Decree, to the United States shall include the principal amount of \$1,417,200.00,
11 plus Interest that shall begin to accrue as of the date of lodging of this Consent Decree, until the
12 date of payment.

13 11. Payment from Net Proceeds as referred to in Paragraph 9 of this Consent Decree, shall
14 be made within three business days after Closing of the Sale of the Springridge Property, as set
15 forth in Paragraph 41 of this Consent Decree, and, if necessary, within three business days after
16 Closing of the Sale of the Collateral Properties and the Ruth Balderston Site Property.

17 12. Sale of the Springridge Property by Settling Defendants, as referred to in Paragraph 9
18 of this Consent Decree, shall be in accordance with the terms and conditions set forth in this
19 Section, Section VII (Sale of the Springridge Property), and Section VIII (The Real Estate
20 Closing of the Sale of the Springridge Property).

21 13. Any lump sum payment, as referred to in Paragraph 9.b. of this Consent Decree, may

1 be made at any time prior to Closing of the Sale of the Springridge Property. Settlement monies
2 due and payable pursuant to Paragraph 9.b. shall include the full amount of \$1,417,200.00 plus
3 any accrued Interest thereon, as provided in this Section and Section VII.

4 14. The Settling Defendants' payment shall be made by FedWire Electronic Funds
5 Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT
6 procedures, referencing USAO File Number ____, EPA Site/Spill ID No. 03-91, and DOJ Case
7 Number _____. Payment shall be made in accordance with instructions provided to the Settling
8 Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern
9 District of Pennsylvania following entry of the Consent Decree. Any payments received by the
10 Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.
11 Settling Defendants shall send notice that such payment has been made to the United States as
12 specified in Section XXII (Notices and Submissions) and to the Docket Clerk (3RC00), United
13 States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

14 15. Settling Defendants' Obligations With Respect to the Sale of the Springridge Property

15 In an effort to satisfy their payment obligations as set forth in Paragraphs 8, 9, and 41
16 of this Consent Decree, with respect to the Springridge Property, Settling Defendants agree as
17 follows:

18 a. If Settling Defendants fail to sell the Springridge Property within 33 months
19 after the effective date of this Consent Decree, the CSDG shall have the option to market the
20 Springridge Property.

21 b. If the CSDG exercises its option to market the Springridge Property, as

provided in this Paragraph, Settling Defendants agree to cooperate with the CSDG with regard to the CSDG's marketing efforts. Any efforts by the CSDG to market the Springridge Property shall be subject to and comply with Paragraph 24 of this Consent Decree.

c. Nothing set forth in this Paragraph shall be deemed to relieve the Settling Defendants from their obligations under this Consent Decree, including, but not limited to those obligations set forth in Section VI, Section VII and Section VIII of this Consent Decree.

d. Settling Defendants agree to sell the Springridge Property by public auction to the highest bidder in accordance with Paragraph 18 of this Consent Decree if: (i) the Sale of the Springridge Property does not occur within 45 months after the effective date of this Consent Decree; or (ii) the Closing of the Sale of the Springridge Property does not occur within 57 months after the effective date of this Consent Decree. The public auction shall take place within 30 days after the dates set forth in this Paragraph.

e. Settling Defendants shall pay to the United States those monies due and owing the United States, as set forth in Paragraph 8 of this Consent Decree, from the Net Proceeds obtained from the Sale of the Springridge Property at public auction, and if necessary, in accordance with Paragraph 16 of this Consent Decree, dealing with Collateral Properties, and if necessary, in accordance with Paragraph 17 of this Consent Decree, dealing with the Ruth Balderston Site Property.

16. Settling Defendants' Obligations with Respect to Payment of Net Proceeds from Collateral Property

a. Settling Defendants agree to maintain as collateral for their payment obligation to the United States, as set forth in Paragraph 8 of the Consent Decree, those parcels of land

1 identified in Appendix "E" and Appendix "F" of this Consent Decree. Settling Defendants agree
2 that they will not sell or convey the Collateral Properties prior to any Sale of the Springridge
3 Property.

4 b. If as a result of the Sale of the Springridge Property, pursuant to Section VI,
5 Section VII, and Section VIII of the Consent Decree: i) Settling Defendants obtain from the Net
6 Proceeds of the Sale of the Springridge Property sufficient monies to pay to the United States the
7 amount due and owing pursuant to Paragraph 8 of the Consent Decree, or Settling Defendants
8 opt to pay the monies due and owing the United States in accordance with Paragraph 9.b. of this
9 Consent Decree; and ii) Settling Defendants have paid to the United States those monies due and
10 owing pursuant to Paragraph 8 of the Consent Decree and there is no unpaid balance due and
11 owing the United States pursuant to Paragraphs 16 or 17 of this Consent Decree, the parties agree
12 that any mortgage, encumbrance, or limitation imposed on the Collateral Properties shall be
13 deemed satisfied and, upon request, the United States shall so state in writing.

14 c. Settling Defendants agree that if, as a result of the Sale of the Springridge
15 Property, pursuant to Section VI, Section VII, and Section VIII of the Consent Decree, Settling
16 Defendants do not obtain from the Net Proceeds of the Sale of the Springridge Property sufficient
17 monies to pay to the United States the amount due and owing pursuant to Paragraph 8 of the
18 Consent Decree, and Settling Defendants do not opt to pay the monies due and owing the United
19 States in accordance with Paragraph 9.b. of this Consent Decree, Settling Defendants shall:

20 i. Pay to the United States the full amount of the Net Proceeds received
21 through the Sale of the Springridge Property in accordance with Paragraphs 9 and 15 of this

1 Consent Decree; and

2 ii. At Settling Defendants' option, either: a) sell the Collateral Properties
3 and pay to the United States the remaining unpaid balance and interest due to the United States
4 up to \$300,000 from the Net Proceeds of such sales; or b) make a lump sum cash payment to the
5 United States in the amount of the unpaid balance and interest due to the United States, up to
6 \$300,000. For purposes of this provision, the unpaid balance due the United States shall be
7 calculated based upon the amount due and owing the United States pursuant to Paragraph 8 of
8 the Consent Decree, minus whatever amount has been paid pursuant to Paragraphs 9 or 15.d. and
9 e. of this Consent Decree.

10 d. Settling Defendants agree that any amount to be paid to the United States from
11 Net Proceeds obtained from Collateral Properties shall be paid to the United States within one (1)
12 year of the Closing of the Sale of the Springridge Property. Interest on this unpaid balance shall
13 continue to accrue from the date when the United States receives payment from the Net Proceeds
14 from the Sale of the Springridge Property, until the amount due and owing the United States from
15 the Collateral Properties is paid.

16 e. Settling Defendants agree that they will preserve and protect the Collateral
17 Properties until Settling Defendants complete their payment obligations to the United States
18 pursuant to Paragraph 16.b. and c. of this Consent Decree.

19 f. If Settling Defendants do not sell the Collateral Properties within one (1) year of
20 the Closing of the Sale of the Springridge Property, Settling Defendants agree to sell the
21 Collateral Properties at public auction to the highest bidder in accordance with Paragraph 18 of

1 this Consent Decree. The public auction shall take place within one year and 30 days after the
2 Closing of the Sale of the Springridge Property.

3 g. Settling Defendants shall pay to the United States those monies due and owing
4 the United States, as set forth in Paragraph 8 of this Consent Decree, from the Net Proceeds
5 obtained from any sale at public auction of the Collateral Properties, in accordance with
6 Paragraphs 9 and 16 of this Consent Decree.

7 17. Settling Defendants' Obligations with Respect to Payment of Net Proceeds from The
8 Ruth Balderston Site Property

9 a. Settling Defendants agree that if full payment of the monies due and owing the
10 United States as set forth in Paragraph 8 of this Consent Decree cannot be made from: i) the Net
11 Proceeds from the Sale of the Springridge Property pursuant to Paragraphs 9.a. and 15 and
12 Sections VII and VIII of this Consent Decree; and ii) from Net Proceeds, not to exceed \$300,000,
13 from the Sale of the Collateral Properties pursuant to Paragraphs 9.b. and 16 of this Consent
14 Decree, then no later than one (1) year after the Closing of the Sale of the Collateral Properties,
15 in accordance with the timing provisions set forth in Paragraphs 15 and 16 of this Consent
16 Decree, Settling Defendants will sell the Ruth Balderston Site Property and pay to the United
17 States the remaining unpaid balance due to the United States up to \$50,000 from the Net
18 Proceeds of such sale.

19 b. If Settling Defendants do not sell the Ruth Balderston Site Property within one
20 (1) year of the Closing of the Sale of the Collateral Properties, Settling Defendants agree to sell
21 the Ruth Balderston Site Property by public auction to the highest bidder in accordance with
22 Paragraph 18 of this Consent Decree. The auction shall take place within one year and 30 days.

1 after the Closing of the Sale of the Collateral Properties.

2 c. Settling Defendants shall pay to the United States those monies due and owing
3 the United States, as set forth in Paragraph 8 of this Consent Decree, from the Net Proceeds
4 obtained from the sale at public auction of the Ruth Balderston Site Property, in accordance with
5 this Paragraph.

6 18. If Settling Defendants are required to sell the Springridge Property, the Collateral
7 Properties, and/or the Ruth Balderston Site Property, by public auction to the highest bidder, in
8 accordance with Paragraphs 15.d., 16.e., and/or 17.b. of this Consent Decree, Settling Defendants
9 agree to engage a professional auctioneer and to fully publicize the auction of the property, by
10 means of daily advertisements in local newspapers for twenty-one (21) days preceding the
11 auction, as well as by all other appropriate and customary means.

12 19. Application of Settlement Monies Paid by Settling Defendants

13 The United States shall apply settlement monies paid by Settling Defendants pursuant to this
14 Section of this Consent Decree to reimburse response costs incurred in connection with the Site.
15 Costs to be reimbursed shall include, but not be limited to:

16 a. CSDG Interim Costs Obligations, as set forth in Paragraph 67 of the RD/RA
17 Consent Decree; and

18 b. CSDG Future Costs Obligations, as set forth in Paragraph 67 of the RD/RA
19 Consent Decree, through the date of lodging of this Consent Decree.

20 20. If the United States brings an action to collect any payment required by this Consent
21 Decree, and if the United States then secures a payment, or an order directing payment, of any

1 portion of the amount sought by the action, the Settling Defendants shall reimburse the United
2 States for all expenses, fees, and other costs arising from such action, including, but not limited
3 to, costs of attorney time.

4 **VII. SALE OF SPRINGRIDGE PROPERTY**

5 21. Settling Defendant Springridge, including Springridge's officers, directors, and
6 shareholders, shall begin marketing the Springridge Property for sale no later than the Effective
7 Date of this Consent Decree. All other Settling Defendants agree to cooperate in such effort.

8 22. Settling Defendants shall sell the Springridge Property at fair market value. Settling
9 Defendants' sale of the Springridge Property shall be subject to and in accordance with
10 applicable provisions set forth in Section VI, this Section VII, and Section VIII of this Consent
11 Decree.

12 23. Any agreement for sale for the Springridge Property entered into by Settling
13 Defendants with any purchaser of the Springridge Property will provide that any development of
14 the Springridge Property will be in accordance with all law, including, where applicable, State,
15 County, and local zoning and planning rules and regulations that have the force of law.
16 Notwithstanding the previous sentence, any buyer shall have the right to use lawful means to
17 challenge or seek a change in any of the applicable zoning and planning rules and regulations.

18 24. Settling Defendants agree to use their Best Efforts to sell the Springridge Property.
19 "Best Efforts," for purposes of this Paragraph, shall include, but not be limited to:

20 a. listing the Springridge Property with a broker, dealer, agent, or person who
21 usually deals with the type of property in question and is not disapproved by EPA;

- b. actively marketing the Springridge Property in accordance with reasonable, applicable real estate standards;
- c. responding promptly to the reasonable inquiries of prospective buyers;
- d. maintaining the Springridge Property in a condition suitable for exhibition to prospective buyers;
- e. allowing the Springridge Property to be shown at all reasonable times; and
- f. assisting the broker, dealer, agent, or person in any other reasonable way requested in an effort to sell the Springridge Property at fair market value within a reasonable time.

25. Settling Defendants shall provide to the United States the names, addresses, telephone numbers, and commission fee schedules of licensed brokers, dealers, agents, or persons in close proximity to the Springridge Property who usually deal with the type of property in question.

26. EPA shall provide written notice to Settling Defendants of the identity of any broker, dealer, agent, or person that EPA disapproves and an authorization for Settling Defendants to proceed with any other broker, dealer, agent, or person not disapproved by EPA.

27. Settling Defendants shall not act as brokers. Settling Defendants shall receive no fee for their services in attempting to sell the Springridge Property.

28. Settling Defendants shall provide to EPA and DOJ written progress reports describing efforts by Settling Defendants and any broker, dealer, agent, or person thereof to market and/or sell the Springridge Property. Such progress reports shall be submitted by the Settling Defendants to EPA and DOJ every ninety (90) days, commencing from the Effective Date of this

1 Consent Decree. Progress reports to be submitted by Settling Defendants in accordance with this
2 Paragraph, shall include the following information:

- 3 a. copies of all advertising published with respect to the sale of the Springridge
4 Property, indicating where and when such advertising is/was displayed;
- 5 b. a general description of written offers received by Settling Defendants with
6 regard to the Springridge Property;
- 7 c. a summary of proposed purchase prices to be paid for the Springridge Property
8 and material conditions relating to any proposed purchase of the Springridge Property; and
- 9 d. date(s) of offers received.

10 29. Settling Defendants agree that any executed contract for the conveyance of the
11 Springridge Property may be objected to or challenged by the United States in accordance with
12 Paragraph 32 of the Consent Decree. Any contract for the sale of the Springridge Property shall
13 expressly provide that the sale of the Springridge Property shall be contingent on and subject to
14 approval of the United States.

15 30. Settling Defendants shall provide notice to EPA and DOJ of execution of any contract
16 for the Sale of the Springridge Property, no later than five (5) business days following the
17 execution of any such contract. Notice to be provided by Settling Defendants pursuant to this
18 Paragraph shall include the following:

- 19 a. the amount of the proposed purchase price to be paid for the Springridge
20 Property;
- 21 b. date(s) of receipt of the offer and of the proposed Sale and/or Closing;

- c. a summary of material conditions relating to the proposed purchase; and
- d. a description of property included in the proposed purchase offer.

31. Settling Defendants agree that they will not execute a contract for the sale of the Springridge Property with any party who has caused or contributed to a release or threat of a release of hazardous substances to, at or from the Site or is subject to potential liability under CERCLA and/or any other law for Existing Contamination at the Site, and who has not otherwise resolved its potential liability for Existing Contamination at the Site pursuant to an agreement with the United States, including EPA.

32. a. If the United States objects to any proposed Sale by Settling Defendants of the Springridge Property, the United States reserves its right to challenge the proposed Sale in accordance with this Consent Decree. The United States may challenge the proposed Sale based upon the following reasons:

- i. the proposed Sale is fraudulent;
- ii. the proposed Sale is the result of self dealing;
- iii. the proposed Sale is or would be in violation of any laws, or is inconsistent or in violation of any provision of this Consent Decree.

b. Settling Defendants agree that in the event the United States objects to or challenges any proposed Sale of the Springridge Property or otherwise challenges, in accordance with Section XIII (Dispute Resolution) of this Consent Decree, the performance by the Settling Defendants of the requirements set forth in Section VI, Section VII, or Section VIII of this Consent Decree, Settling Defendants shall, upon request by the United States, provide to the

1 United States copies of all written purchase offers, or other documents summarizing or referring
2 to written purchase offers, received by the Settling Defendants for the Springridge Property.

3 Settling Defendants shall make such documents available to the United States for review and
4 allow the United States to make copies of such documents within three (3) days of receipt of any
5 request by the United States.

6 c. The United States will maintain any documentation submitted by Settling
7 Defendants pursuant to Paragraphs 25, 28.b. c. and d., 30, and this Paragraph, and identified by
8 the Settling Defendants as Confidential Business Information, in accordance with Confidential
9 Business Information provisions set forth in 40 C.F.R. § 2.201, et. seq. Parties to this Consent
10 Decree reserve their rights to seek a protective order from the Court in order to maintain the
11 confidentiality of documents provided by Settling Defendants.

12 33. Settling Defendants will not hold a mortgage from the purchaser of the Springridge
13 Property if the holding of such a mortgage by Settling Defendants would result in the United
14 States not being paid the full amount due and owing it pursuant to Paragraph 8 of this Consent
15 Decree.

16 **VIII. THE REAL ESTATE CLOSING OF THE SALE OF THE SPRINGRIDGE**
17 **PROPERTY**

18 34. Settling Defendants shall provide the United States with thirty (30) days notice of the
19 date and location of the Closing of the Sale of the Springridge Property.

20 35. Settling Defendants agree that the United States may attend the Closing of the Sale of
21 the Springridge Property. Settling Defendants shall provide to the prospective purchaser written
22 notice in advance of the Closing of the United States' intent to be present at Closing.

1 36. Settling Defendant Springridge agrees to provide to the prospective purchaser of the
2 Springridge Property the notice required in Paragraph 6.b. of this Consent Decree.

3 37. Settling Defendants shall provide to the United States copies of all contracts and
4 documents relating to the Sale and Closing of the Sale of the Springridge Property thirty (30)
5 days prior to Closing. The United States will maintain any documentation submitted by Settling
6 Defendants pursuant to this Paragraph, and identified by the Settling Defendants as Confidential
7 Business Information, in accordance with Confidential Business Information provisions set forth
8 in 40 C.F.R. § 2.201, et. seq.

9 38. If the prospective purchaser of the Springridge Property wishes to obtain the Covenant
10 by the United States as to Successors in Interest or Assigns, as provided in Paragraph 79 of this
11 Consent Decree, and the Contribution Protection as to Successors in Interest or Assigns as
12 provided in Paragraph 91 of this Consent Decree, Settling Defendants and/or the prospective
13 purchaser of the Springridge Property shall provide to the United States no later than thirty (30)
14 days prior to Closing, the Agreement and Certification of Successor in Interest or Assign, as set
15 forth in Appendix "C" of this Consent Decree, executed by the Springridge Property prospective
16 purchaser.

17 39. At least five (5) days prior to Closing, the United States shall provide to the Settling
18 Defendants and the CSDG a written confirmation of the amount, including any Interest thereon,
19 due and owing by Settling Defendants pursuant to Section VI of this Consent Decree.

20 40. If the United States determines that the prospective purchaser of the Springridge
21 Property is eligible to obtain the Covenant as to Successors in Interest or Assigns provided in

Paragraph 79 of this Consent Decree, at least five (5) days prior to Closing, the United States shall provide to the prospective purchaser of the Springridge Property, with copies to the Settling Defendants and the CSDG, a fully executed Agreement and Certification of Successor in Interest or Assign.

41. Settling Defendants agree that the amount due and owing the United States from the Net Proceeds from the Sale of the Springridge Property, as referred to in Paragraph 9 of this Consent Decree, shall be paid at Closing of the Sale of the Springridge Property. In the event that the Net Proceeds from the Sale of the Springridge Property are insufficient to pay the full amount due and owing the United States, as set forth in Paragraphs 8 and 10 of this Consent Decree, Settling Defendants agree that they will pay to the United States at the Closing of the Sale of the Springridge Property the full amount of the Net Proceeds received from the Sale of the Springridge Property, and shall proceed with Settling Defendants' obligations set forth in Paragraphs 16 and 17 of this Consent Decree, with respect to the Collateral Properties and the Ruth Balderston Site Property.

42. a. Pursuant to the authority vested in the United States, as set forth in Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), in August 1997, EPA filed a lien upon the Springridge Property ("Springridge Lien"). The parties agree that, pursuant to CERCLA Section 107(l)(2), 42 U.S.C. § 9607(l)(2), this lien shall continue in full force and effect until EPA provides written notice that the Settling Defendants have fully satisfied their obligations under this Consent Decree, as set forth in this Paragraph of this Consent Decree.

b. Release of Lien

1 i. Upon request, at least five (5) days prior to Closing of the Sale of the
2 Springridge Property, EPA shall provide to the Settling Defendants and to the prospective
3 purchaser of the Springridge Property, a letter indicating its intent to release the Springridge Lien
4 on the Springridge Property upon full satisfaction of Settling Defendants' payment obligations to
5 the United States at Closing of the Sale of the Springridge Property, as set forth in Section VI of
6 this Consent Decree.

7 ii. Upon full satisfaction of Settling Defendants' payment obligations with
8 respect to the payment of monies due and owing at Closing of the Sale of the Springridge
9 Property, EPA shall provide to the title clerk/escrow agent at Closing a Certificate of Non-
10 Attachment of Federal Superfund Lien for filing in the United States District Court for the
11 Eastern District of Pennsylvania and with the prothonotary of Chester County, Pennsylvania, or
12 other appropriate local office.

13 iii. Notwithstanding anything in this Consent Decree to the contrary, EPA
14 shall release the Springridge Lien upon payment by the Settling Defendants of the lump sum cash
15 payment pursuant to Paragraphs 9.b, 13, and 41 of this Consent Decree. EPA agrees to file a
16 Certificate of Non-Attachment of Federal Superfund Lien for filing in the United States District
17 Court for the Eastern District of Pennsylvania and with the prothonotary of Chester County,
18 Pennsylvania, or other appropriate local office, no later than within thirty (30) days of receipt of
19 the payment specified in this Paragraph.

20 43. Nothing in this Section VIII shall be construed to limit the United States' rights to
21 object to the Sale of the Springridge Property, as set forth in Paragraph 32 of this Consent

Decree, and/or to refuse to release and satisfy the Springridge Lien, as provided in Paragraph 42.

The parties agree that the United States may refuse to release and satisfy the Superfund lien on the Springridge Property if:

- a. the proposed Sale is fraudulent;
- b. the proposed Sale is the result of self dealing;
- c. the proposed Sale is or would be in violation of any laws, or is inconsistent or in violation of any provision of this Consent Decree.

IX. SALE OF THE CHEMCLENE PROPERTY, THE RUTH BALDERSTON SITE PROPERTY, AND THE RUTH BALDERSTON COLLATERAL PROPERTY

44. Settling Defendants agree that the requirements set forth in the following Paragraphs of this Consent Decree shall apply in full force to the sale by Settling Defendants of the Chemcene Property, the Ruth Balderston Site Property, and the Ruth Balderston Collateral Property:

Paragraph 22 (Sale at Fair Market Value)

Paragraph 23 (Relating to Development of Property);

Paragraph 24 (Best Efforts)

Paragraph 27 (Sellers Not to Act as Brokers);

Paragraph 31 (No Contract with Potentially Responsible Parties That Have Not Resolved Liability at Site).

45. The United States reserves its right to challenge the proposed sale of the Chemcene Property, the Ruth Balderston Site Property, and the Ruth Balderston Collateral Property in accordance with this Consent Decree. The United States may challenge the proposed sale of

1 such properties based upon the following reasons:

- 2 a. the proposed sale is fraudulent;
- 3 b. the proposed sale is the result of self dealing;
- 4 c. the proposed sale is or would be in violation of any laws, or is
- 5 inconsistent or in violation of any provision of this Consent Decree.

6 46. If the prospective purchasers of the Chemclene Property or the Ruth Balderston Site
7 Property wish to obtain the Covenant by the United States as to Successors in Interest or Assigns,
8 as provided in Paragraph 79 of this Consent Decree, Settling Defendants and/or the prospective
9 purchaser of the Chemclene Property or the Ruth Balderston Site Property shall provide to the
10 United States and the CSDG no later than thirty (30) days prior to Closing, the Agreement and
11 Certification of Successor in Interest or Assign, as set forth in Appendix "C" of this Consent
12 Decree, executed by the Chemclene Property or the Ruth Balderston Site Property prospective
13 purchaser.

14 X. ACCESS/INSTITUTIONAL CONTROLS

15 47. If the Site, or any other property where access and/or land/water use restrictions are
16 needed to implement this Consent Decree and/or the RD/RA Consent Decree, is owned or
17 controlled by any of the Settling Defendants, such Settling Defendants:

- 18 a. shall provide to EPA, its authorized officers, employees, representatives, and all
19 other persons, including the CSDG, its authorized officers, employees, and representatives,
20 performing response actions under EPA oversight, an irrevocable right of access at all reasonable
21 times to the Site and to any other property to which access is required for the implementation of

1 response actions at the Site, to the extent access to such other property is controlled by Settling
2 Defendants, for the purposes of performing and overseeing response actions at the Site under
3 federal law. Activities for which access shall be provided by Settling Defendants shall include,
4 but not be limited to:

5 i. Implementation and oversight of the CSDG's Remedial Design
6 obligations, in accordance with the RD/RA Consent Decree;

7 ii. Implementation and oversight of the CSDG's Remedial Action
8 obligations, including, but not limited to, site preparation activities necessary in order for the
9 CSDG to implement the Remedial Action, in accordance with the RD/RA Consent Decree;

10 iii. Monitoring the Work, as defined in the RD/RA Consent Decree;

11 iv. Verifying any data or information submitted to the United States;

12 v. Conducting investigations relating to contamination at or near the Site;

13 vi. Obtaining samples;

14 vii. Assessing the need for, planning, or implementing additional response
15 actions at or near the Site;

16 viii. Implementing the Work pursuant to the conditions set forth in
17 Paragraph 105 of the RD/RA Consent Decree (Work Takeover);

18 ix. Inspecting and copying records, operating logs, contracts, or other
19 documents maintained or generated by Settling Defendants or their agents, consistent with
20 Section XXI;

21 x. Assessing Settling Defendants' compliance with this Consent Decree;

1 and

2 xi. Determining whether the Site or other property is being used in a
3 manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or
4 pursuant to this Consent Decree;

5 b. shall agree to the following Institutional Controls:

6 i. commencing on the date of lodging of this Consent Decree, Settling
7 Defendants shall refrain from using the Site, or such other property, in any manner that would
8 interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial
9 measures to be performed pursuant to the RD/RA Consent Decree.

10 ii. With respect to any capped area on the Site, except as pre-approved by
11 EPA, Settling Defendants shall not:

12 (A) construct, create, erect, or move onto the land, or permit the
13 construction, creation, erection, or movement onto to the land, any building, structure or trailer;

14 (B) construct, develop, or maintain, or permit the construction,
15 development, or maintenance across the land of any subsurface utility lines;

16 (C) place or permit placement of any subsurface storage tanks under
17 the land; and

18 (D) disturb the surface of the land by filling, drilling, excavation,
19 removal of rock, or minerals, or otherwise changing the topography of the land in any manner.

20 iii. No vehicle that may endanger the integrity of the cap may be parked,
21 driven, or caused to be driven or parked on the cap. No object of any kind which could damage

1 the integrity of the cap shall be placed or caused to be placed on the cap.

2 iv. No Hazardous Substances or Waste Material shall be deposited, stored,
3 placed, dumped or buried on the Site;

4 v. There shall be no installation or use of new ground water wells or use of
5 any existing ground water wells on the Site.

6 vi. No human consumption of contaminated groundwater shall be allowed
7 at or on the Site. Drinking water supply wells shall not be installed on the Site; and

8 vii. No new development at the Site shall be conducted or implemented that
9 EPA determines will adversely affect the natural hydraulic containment and migration of
10 contaminated groundwater at or from the Site.

11 c. shall execute and record in the Recorder's Office of Chester County,
12 Commonwealth of Pennsylvania, an easement relating to the Chemclene Property, in the form of
13 Appendix "J," that (i) grants to the Grantee named therein a right of access to the Chemclene
14 Property for the purpose of conducting any activity related to this Consent Decree including, but
15 not limited to, those activities listed in Paragraph 47.a. of this Consent Decree, and the RD/RA
16 Consent Decree, and (ii) grants to the Grantee named therein the right to enforce the land/water
17 use restrictions listed in Paragraph 47.b. of this Consent Decree, or other restrictions that EPA
18 determines are necessary to implement, ensure non-interference with, or ensure the
19 protectiveness of the remedial measures to be performed pursuant to the RD/RA Consent Decree
20 with respect to the Chemclene Property. Settling Defendants shall, within forty-five (45) days of
21 entry of this Consent Decree, submit to EPA for review and approval with respect to the

1 Chemclene Property, the easement and a current title insurance commitment or some other
2 evidence of title acceptable to EPA, which shows title to the land described in the easement to be
3 free and clear of all prior liens and encumbrances (except when those liens or encumbrances are
4 approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release
5 or subordination of such prior liens or encumbrances).

6 Within fifteen (15) days of EPA's approval and acceptance of the easement and the title
7 evidence, such Settling Defendants shall update the title search and, if it is determined that
8 nothing has occurred since the effective date of the commitment to affect the title adversely,
9 record the easement with the Recorder's Office of Chester County. Within thirty (30) days of
10 recording the easement, such Settling Defendants shall provide EPA with a final title insurance
11 policy, or other final evidence of title acceptable to EPA, and a certified copy of the original
12 recorded easement showing the clerk's recording stamps.

13 48. If EPA determines that land/water use restrictions in the form of state or local laws,
14 regulations, ordinances or other governmental controls are needed to implement the remedy
15 selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference
16 therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental
17 controls.

18 49. Notwithstanding any provision of this Consent Decree, the United States retains all of
19 its access authorities and rights, as well as all of its rights to require land/water use restrictions,
20 including enforcement authorities related thereto, under CERCLA, RCRA, and any other
21 applicable statute or regulations, including any amendments thereto.

1 50. EPA and the CSDG agree to provide reasonable notice to Settling Defendants of the
2 timing of response actions to be undertaken at the Site.

3 51. Nothing in this Consent Decree is meant to prohibit Settling Defendants and
4 their Successors in Interest or Assigns from lawfully developing the Site for commercial or
5 residential purposes, in accordance with all law, including, where applicable, State, County, and
6 local zoning and planning rules and regulations that have the force of law. Notwithstanding the
7 previous sentence, Settling Defendants and/or Successors in Interest or Assigns shall have the
8 right to use lawful means to challenge or seek a change in any of the applicable zoning and
9 planning rules and regulations.

10 **XI. DE MINIMIS SETTLEMENTS**

11 52. Consistent with the RD/RA Consent Decree, any monies received from *de minimis*
12 PRPs from Future *De Minimis* Settlements, shall be deposited into the Malvern TCE Superfund
13 Site Special Account.

14 53. Monies received from *de minimis* PRPs from Future *De Minimis* Settlements that are
15 deposited into the Malvern TCE Superfund Site Special Account, as referred to in Paragraph 52,
16 shall be made available for reimbursement to the CSDG in accordance with the Special Account
17 eligibility and disbursement provisions set forth in Paragraph 73.b. through 73.h. of the RD/RA
18 Consent Decree.

19 54. The United States agrees that any costs incurred or paid by the United States to
20 pursue and/or implement Future *De Minimis* Settlements, shall not be assessed or billed to the
21 CSDG, and such costs shall not be included as CSDG Future Costs Obligations in connection

with the Site.

XII. DUE CARE/COOPERATION

55. Settling Defendants shall exercise due care at the Site and shall comply with all applicable local, State, and federal laws and regulations.

56. Settling Defendants represent that as of the Effective Date of this Consent Decree they will not engage in any activities on the Site that pertain to the handling, storage, release, disposal, processing, and/or sale of any Hazardous Substances or Waste Materials. Settling Defendants agree that they will not, at any time thereafter, engage in any such activities on the Site.

57. Settling Defendants recognize that the presence of existing waste materials and the resulting implementation of response actions required at the Site, as determined by EPA to be necessary to protect public health and the environment, may interfere with the Settling Defendants' use of the Site. Settling Defendants agree to cooperate fully with EPA and the CSDG in the implementation of response actions at the Site and further agree not to interfere with such response actions. EPA and CSDG agree to use reasonable efforts to minimize any interference with the Settling Defendants' operations by such entry and response. In the event Settling Defendants become aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any

1 applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any
2 other law, immediately notify EPA of such release or threatened release.

3 58. Notwithstanding anything herein to the contrary, nothing in this Consent Decree is
4 meant to prohibit the ordinary residential usage of household chemicals or waste in a residential
5 setting.

6 59. The CSDG agrees to provide Settling Defendants with reasonable notice prior to the
7 implementation of activities required und the Remedial Action Work Plan, as defined in the
8 RD/RA Consent Decree.

9 a. In cooperation with the CSDG, the Settling Defendants shall, in accordance
10 with all applicable laws and regulations, and as appropriate, remove any equipment Settling
11 Defendants wish to salvage from those areas of the Site subject to Remedial Action activities.

12 b. With respect to any materials or product of Settling Defendants located on-Site
13 not addressed by the ROD, Settling Defendants may salvage such materials or product in
14 accordance with all applicable laws and regulations, provided, however, that Settling
15 Defendants agree to provide to EPA and the CSDG:

16 i. An inventory of all such materials and product;
17 ii. A description of Settling Defendants' proposed removal or disposition
18 of such materials or product at or from the Site.

19 c. Settling Defendants shall provide to EPA and the CSDG the information
20 referred to in Paragraph 59.c. at least fourteen (14) days prior to any proposed removal or
21 disposition of any such materials or product.

XIII. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

61. The United States, Settling Defendants, and the CSDG agree that, with respect to any disputes arising between the United States and the Settling Defendants pursuant to this Section, the CSDG shall be provided with reasonable notice of all such disputes and an opportunity to submit a statement of the CSDG's position with regard to such disputes. Any disputes that may arise between Settling Defendants and the CSDG shall not be the subject of Dispute Resolution under this Consent Decree; resolution of such dispute shall be controlled by the Confidential Settling Defendants/CSDG Agreement.

62. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

63. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants

1 invoke the formal dispute resolution procedures of this Section by serving on the United States a
2 written Statement of Position on the matter in dispute, including, but not limited to, any factual
3 data, analysis or opinion supporting that position and any supporting documentation relied upon
4 by the Settling Defendants. The Statement of Position shall specify the Settling Defendants'
5 position as to whether formal dispute resolution should proceed under Paragraph 64 or
6 Paragraph 65.

7 a. Within fourteen (14) days after receipt of Settling Defendants' Statement of
8 Position, EPA will serve on Settling Defendants its Statement of Position, including, but not
9 limited to, any factual data, analysis, or opinion supporting that position and all supporting
10 documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to
11 whether formal dispute resolution should proceed under Paragraph 64 or 65. Within seven (7)
12 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

13 b. If there is disagreement between EPA and the Settling Defendants as to
14 whether dispute resolution should proceed under Paragraph 64 or 65, the parties to the dispute
15 shall follow the procedures set forth in the Paragraph determined by EPA to be applicable.
16 However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the
17 Court shall determine which Paragraph is applicable in accordance with the standards of
18 applicability set forth in Paragraphs 64 and 65.

19 64. Formal dispute resolution for disputes pertaining to disputes that are accorded review
20 on the administrative record under applicable principles of administrative law shall be
21 conducted pursuant to the procedures set forth in this Paragraph.

1 a. An administrative record of the dispute shall be maintained by EPA and shall
2 contain all statements of position, including supporting documentation, submitted pursuant to
3 this Section. Where appropriate, EPA may allow submission of supplemental statements of
4 position by the parties to the dispute.

5 b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will
6 issue a final administrative decision resolving the dispute based on the administrative record
7 described in Paragraph 64.a. This decision shall be binding upon the Settling Defendants,
8 subject only to the right to seek judicial review pursuant to Paragraph 64.c. and d.

9 c. Any administrative decision made by EPA pursuant to Paragraph 64.b. shall be
10 reviewable by this Court, provided that a motion for judicial review of the decision is filed by
11 the Settling Defendants with the Court and served on all Parties within ten (10) days of receipt
12 of EPA's decision. The motion shall include a description of the matter in dispute, the efforts
13 made by the parties to resolve it, the relief requested, and the schedule, if any, within which the
14 dispute must be resolved to ensure orderly implementation of this Consent Decree. The United
15 States may file a response to Settling Defendants' motion.

16 d. In proceedings on any dispute governed by this Paragraph, Settling Defendants
17 shall have the burden of demonstrating that the decision of the Director of the Hazardous Site
18 Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance
19 with law. Judicial review of EPA's decision shall be on the administrative record compiled
20 pursuant to Paragraph 64.a.

21 65. Formal dispute resolution for disputes that are not accorded review on the

1 administrative record under applicable principles of administrative law, shall be governed by
2 this Paragraph.

3 a. Following receipt of Settling Defendants' Statement of Position submitted
4 pursuant to Paragraph 63, the Director of the Hazardous Site Cleanup Division, EPA Region III,
5 will issue a final decision resolving the dispute. The Director's decision shall be binding on the
6 Settling Defendants unless, within ten (10) days of receipt of the decision, the Settling
7 Defendants file with the Court and serve on the parties a motion for judicial review of the
8 decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief
9 requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly
10 implementation of the Consent Decree. The United States may file a response to Settling
11 Defendants' motion.

12 b. Judicial review of any dispute governed by this Paragraph shall be governed by
13 applicable principles of law.

14 66. The invocation of formal dispute resolution procedures under this Section shall not
15 extend, postpone, or affect in any way any obligation of the Settling Defendants under this
16 Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated
17 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed
18 pending resolution of the dispute as provided in Paragraph 75. Notwithstanding the stay of
19 payment, stipulated penalties shall accrue from the first day of noncompliance with any
20 applicable provision of this Consent Decree. In the event that the Settling Defendants do not
21 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in

1 Section XIV(Stipulated Penalties).

2 67. Any disputes between the United States and the CSDG arising under the RD/RA
3 Consent Decree shall continue to be subject to and governed by the Dispute Resolution
4 provisions set forth in Section XX of the RD/RA Consent Decree.

5 **XIV. STIPULATED PENALTIES**

6 68. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in
7 Paragraphs 69 and 70 to the United States for failure to comply with the requirements of this
8 Consent Decree specified below. "Compliance" by Settling Defendants shall include
9 completion of the activities under this Consent Decree in accordance with all applicable
10 requirements of law, this Consent Decree, and any plans or other documents approved by EPA
11 pursuant to this Consent Decree and within the specified time schedules established by and
12 approved under this Consent Decree. The parties agree that the CSDG shall not be liable for
13 any stipulated penalties assessed to Settling Defendants for failure to comply with the
14 requirements of this Consent Decree.

15 69. If any amount due to the United States under this Consent Decree is not paid by the
16 required date, the Settling Defendants shall pay as a stipulated penalty, in addition to the Interest
17 required by Paragraph 8, \$1,000 per day that such payment is late.

18 70. a. The following stipulated penalties shall accrue per violation per day for any
19 noncompliance, other than for failure to make timely payments as set forth in Section VI of this
20 Consent Decree:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 500.00	1 st through 14 th day
\$ 1,000.00	15 th through 30 th day
\$ 1,500.00	31 st day and beyond

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 64.b. or 65.a. of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

72. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a

1 violation.

2 73. All penalties accruing under this Section shall be due and payable to the United
3 States within thirty (30) days of the Settling Defendants' receipt from EPA of a demand for
4 payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures
5 under Section XIII (Dispute Resolution). All payments to the United States under this Section
6 shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances
7 Superfund," shall be mailed to the United States Environmental Protection Agency, Region III,
8 Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515, shall indicate
9 that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID
10 #0391, the DOJ Case Number 90-11-3-1731, and the name and address of the party making
11 payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal
12 letter(s), shall be sent to the United States as provided in Section XXII (Notices and
13 Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection
14 Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

15 74. The payment of penalties shall not alter in any way Settling Defendants' obligations
16 under this Consent Decree.

17 75. Penalties shall continue to accrue as provided in Paragraph 66 during any dispute
18 resolution period, but need not be paid until the following:

19 a. If the dispute is resolved by agreement or by a decision of EPA that is not
20 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within
21 fifteen (15) days of the agreement or the receipt of EPA's decision or order;

1 b. If the dispute is appealed to this Court and the United States prevails in whole
2 or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be
3 owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as
4 provided in Subparagraph c below;

5 c. If the District Court's decision is appealed by any Party, Settling Defendants
6 shall pay all accrued penalties determined by the District Court to be owing to the United States
7 into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision
8 or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty
9 (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow
10 agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that
11 they prevail.

12 76. a. If Settling Defendants fail to pay stipulated penalties when due, the United
13 States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants
14 shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand
15 made pursuant to Paragraph 71.

16 b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in
17 any way limiting the ability of the United States to seek any other remedies or sanctions
18 available by virtue of Settling Defendants' violation of this Decree or of the statutes and
19 regulations upon which it is based, including, but not limited to, penalties pursuant to Section
20 122(l) of CERCLA. Notwithstanding anything herein to the contrary, no stipulated penalties
21 will be due for any noncompliance that is based on the refusal of the Recorder's Office to record

1 a document approved by the United States, provided that Settling Defendants cure whatever
2 deficiency prohibits the recording of the document within fourteen (14) days of receipt by
3 Settling Defendants of notice of such refusal.

4 77. Notwithstanding any other provision of this Section, the United States may, in its
5 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to
6 this Consent Decree.

7 **XV. COVENANTS NOT TO SUE BY PLAINTIFF**

8 78. Plaintiff's Covenant Not to Sue Settling Defendants

9 In consideration of the actions that will be performed and the payments that will be
10 made by the Settling Defendants under the terms of the Consent Decree, and except as
11 specifically provided in Paragraph 80 of this Section, the United States covenants not to sue or
12 to take administrative action against Settling Defendants for civil liability for reimbursement of
13 Response Costs or for injunctive relief pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C.
14 §§ 9606 or 9607, or for injunctive relief pursuant to Section 7003 of the RCRA, 42 U.S.C. §
15 6973, with regard to the Site. These covenants not to sue shall take effect upon the receipt by
16 EPA of the payments required by Paragraph 8 of Section VI (Payments for Response Costs).

17 79. Plaintiff's Covenant Not to Sue Successors in Interest or Assigns

18 a. The United States covenants not to sue or take administrative action against a
19 Successor in Interest or Assign of the Springridge Property, the Chemcene Property, and/or the
20 Ruth Balderston Site Property, for any and all civil liability for injunctive relief or
21 reimbursement of Response Costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C.

1 §§ 9606 or 9607, with respect to Existing Contamination, provided all of the following
2 additional conditions are satisfied:

3 (1) With Respect to the Springridge Property:

4 i. that prior to Closing of the Sale of the Springridge Property, the
5 Successor in Interest or Assign agrees to, and duly executes and submits to EPA, with proof of
6 delivery, the attached Agreement and Certification of Successor in Interest or Assign in
7 Appendix "C" to this Consent Decree, for execution by EPA;

8 ii. that prior to the Closing of the Sale of the Springridge Property, EPA
9 duly executes the notice and agreement in Appendix "C" submitted by the Successor in Interest
10 or Assign; and

11 iii. that at the time of the Closing of the Sale of the Springridge Property,
12 all amounts due at Closing of the Sale of the Springridge Property under this Consent Decree
13 have been paid in full.

14 (2) With Respect to the Chemclene Property:

15 i. that prior to Closing of the Sale of the Chemclene Property, the
16 Successor in Interest or Assign agrees to, and duly executes and submits to EPA, with proof of
17 delivery, the attached Agreement and Certification of Successor in Interest or Assign in
18 Appendix "C" to this Consent Decree, for execution by EPA;

19 ii. that prior to the Closing of the Sale of the Chemclene Property, EPA
20 duly executes the notice and agreement in Appendix "C" submitted by the Successor in Interest
21 or Assign; and

1 iii. that at the time of the Closing of the Sale of the Chemclene Property,
2 all amounts due at Closing of the Sale of the Chemclene Property under this Consent Decree
3 have been paid in full.

4 (3) With Respect to the Ruth Balderston Site Property:

5 i. that prior to Closing of the Sale of the Ruth Balderston Site Property,
6 the Successor in Interest or Assign agrees to, and duly executes and submits to EPA, with proof
7 of delivery, the attached Agreement and Certification of Successor in Interest or Assign in
8 Appendix "C" to this Consent Decree, for execution by EPA;

9 ii. that prior to the Closing of the Sale of the Ruth Balderston Site
10 Property, EPA duly executes the notice and agreement in Appendix "C" submitted by the
11 Successor in Interest or Assign; and

12 iii. that at the time of the Closing of the Sale of the Ruth Balderston Site
13 Property, all amounts due at Closing of the Sale of the Ruth Balderston Site Property under this
14 Consent Decree have been paid in full.

15 This covenant does not extend to any other person.

16 b. By executing the Agreement and Certification of Successor in Interest or
17 Assign in Appendix "C" to this Consent Decree, the Successor in Interest or Assign submits
18 itself to the jurisdiction of this Court for enforcement of same. If after the Agreement is
19 approved pursuant to the terms in this Paragraph, EPA issues a written determination that any
20 representation or certification submitted by a Successor in Interest or Assign to EPA in the
21 Agreement is materially inaccurate or incomplete, the Covenant Not to Sue of Paragraph 9.b. of

1 Appendix "C," and Paragraph 79.a. of this Consent Decree, shall be null and void with respect
2 to such Successor in Interest or Assign, and the United States reserves all rights it may have
3 against such Successor in Interest or Assign.

4 80. Reservations of rights by the United States as to Settling Defendants. The
5 covenants not to sue set forth above do not pertain to any matters other than those expressly
6 specified in Paragraph 78. The United States reserves, and this Consent Decree is without
7 prejudice to, all rights against Settling Defendants with respect to all matters not expressly
8 included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this
9 Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

10 a. claims based on a failure by Settling Defendants to meet a requirement of this
11 Consent Decree;

12 b. liability arising from the past, present, or future disposal, release, or threat of
13 release of Waste Material outside of the Site;

14 c. liability based upon the Settling Defendants' ownership or operation of the
15 Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the
16 arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in
17 connection with the Site, other than otherwise ordered by EPA, after signature of this Consent
18 Decree by the Settling Defendants;

19 d. liability for damages for injury to, destruction of, or loss of natural resources,
20 and for the costs of any natural resource damage assessments;

21 e. criminal liability;

1 f. liability for violations of federal or state law, other than as provided in the
2 Plaintiff's Covenant Not to Sue, as set forth in Paragraph 78 of this Consent Decree; and

3 g. liability for injunctive relief or administrative order enforcement under Section
4 106 of CERCLA, 42 U.S.C. § 9606.

5 81. Reservation of Rights as to Successors in Interest or Assigns

6 The covenants not to sue set forth above do not pertain to any matters other than those
7 expressly specified in Paragraph 78. The United States reserves, and this Consent Decree is
8 without prejudice to, all rights against Successors in Interest or Assigns, with respect to all
9 matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other
10 provision of this Consent Decree, the United States reserves all rights against Successors in
11 Interest or Assigns with respect to

12 a. claims based on a failure by a Successor in Interest or Assign to meet a
13 requirement of the Agreement and Certification of Successor or Assign, or applicable
14 requirement of the Consent Decree;

15 b. liability arising from the past, present, or future disposal, release, or threat of
16 release of Waste Material outside of the Site;

17 c. liability resulting from the release or threat of release of hazardous substances,
18 pollutants or contaminants, at the Property or Site after the Effective Date of the of the Consent
19 Decree, not within the definition of Existing Contamination;

20 d. liability for damages for injury to, destruction of, or loss of natural resources,
21 and for the costs of any natural resource damage assessments;

1 e. criminal liability;

2 f. liability for violations of federal or state law, other than as provided in the
3 Plaintiff's Covenant Not to Sue, as set forth in Paragraph 78 of the Consent Decree; and

4 g. liability for injunctive relief or administrative order enforcement under Section
5 106 of CERCLA, 42 U.S.C. § 9606.

6 82. Notwithstanding any other provision of this Consent Decree, the United States retains
7 all authority and reserves all rights to take any and all response actions authorized by law.

8 83. Plaintiff's Covenant Not To Sue CSDG.

9 a. The United States and the CSDG acknowledge and agree that the United
10 States' Covenant Not to Sue the CSDG (subject to the United States' Reservation of Rights), as
11 set forth in Section XXII of the RD/RA Consent Decree, shall remain in full force and effect,
12 and shall not be superseded by this Consent Decree.

13 b. The United States acknowledges that the proceeds paid to the United States
14 from the Sale of the Springridge Property or a lump sum payment by Settling Defendants to the
15 United States in accordance with Paragraph 9.b. of this Consent Decree shall satisfy in full and
16 release the CSDG's obligation to pay: i) all CSDG Interim Costs Payment Obligations; and ii)
17 CSDG Future Costs Payment Obligations incurred through the date of lodging of this Consent
18 Decree, as set forth in the RD/RA Consent Decree. Upon entry of this Consent Decree, the
19 Covenant Not to Sue the CSDG as set forth in Section XXII of the RD/RA Consent Decree shall
20 cover fully and be effective with respect to: i) all CSDG Interim Costs Payment Obligations; ii)
21 CSDG Future Cost Payment Obligations through the date of lodging of this Consent Decree;

1 and iii) any costs incurred by the United States to pursue and/or implement Future *De Minimis*
2 Settlements.

3 **XVI. COVENANT NOT TO SUE BY CSDG**

4 84. CSDG's Covenant Not To Sue Plaintiff United States.

5 The United States and the CSDG acknowledge and agree that the CSDG's Covenant
6 Not to Sue the United States, as set forth in Section XXIII of the RD/RA Consent Decree, shall
7 remain in full force and effect, and shall not be superseded by this Consent Decree.

8 **XVII. COVENANTS BY SETTLING DEFENDANTS**

9 85. Settling Defendants' Covenant Not to Sue Plaintiff United States. Subject to the
10 reservations in Paragraph 80, Settling Defendants hereby covenant not to sue and agree not to
11 assert any claims or causes of action against the United States with respect to the Site or this
12 Consent Decree, including, but not limited to:

13 a. any direct or indirect claim for reimbursement from the Hazardous Substance
14 Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
15 CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

16 b. any claims against the United States, including any department, agency or
17 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

18 c. any claims arising out of response actions at or in connection with the Site,
19 including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the
20 Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

21 86. The Settling Defendants reserve, and this Consent Decree is without prejudice to,

1 claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the
2 United States Code, for money damages for injury or loss of property or personal injury or death
3 caused by the negligent or wrongful act or omission of any employee of the United States while
4 acting within the scope of his or her office or employment under circumstances where the
5 United States, if a private person, would be liable to the claimant in accordance with the law of
6 the place where the act or omission occurred. However, any such claim shall not include a
7 claim for any damages caused, in whole or in part, by the act or omission of any person,
8 including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. §
9 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or
10 the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies
11 only to claims which are brought pursuant to any statute other than CERCLA and for which the
12 waiver of sovereign immunity is found in a statute other than CERCLA.

13 87. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a
14 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
15 § 300.700(d).

16 88. a. Settling Defendants agree not to assert any claims and to waive all claims or
17 causes of action that they may have for all matters relating to the Site, including for
18 contribution, against any person where the person's liability to Settling Defendants with respect
19 to the Site is based solely on having arranged for disposal or treatment, or for transport for
20 disposal or treatment, of hazardous substances at the Site, or having accepted for transport for
21 disposal or treatment of hazardous substances at the Site if the materials contributed by such

1 person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of
2 the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of
3 solid materials. This waiver shall not apply to any claim or cause of action against any person
4 meeting the above criteria if EPA has determined that the materials contributed to the Site by
5 such person contributed or could contribute significantly to the costs of response at the Site.
6 This waiver also shall not apply with respect to any defense, claim, counterclaim, or cause of
7 action that a Settling Defendant may have against any person if such person asserts a claim or
8 cause of action relating to the Site against such Settling Defendant.

9 b. Settling Defendants agree not to assert any claims and to waive all claims or
10 causes of action that they may have for all matters relating to the Site, including for
11 contribution, against any person that has entered into a final CERCLA § 122(g) *de minimis*
12 settlement with EPA with respect to the Site as of the Effective Date. This waiver shall not
13 apply with respect to any defense, claim, counterclaim, or cause of action that a Settling
14 Defendant may have against any person if such person asserts a claim or cause of action relating
15 to the Site against such Settling Defendant.

16 **XVIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

17 89. Except as provided in Paragraph 88.a. (regarding waiver of claims against *de*
18 *micromis* parties) and Paragraph 88.b. (regarding waiver of claims against *de minimis* parties),
19 nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of
20 action to, any person not a Party to this Consent Decree. The preceding sentence shall not be
21 construed to waive or nullify any rights that any person not a signatory to this decree may have

1 under applicable law. Except as provided in 88.a. (regarding waiver of claims against de
2 micromis parties) and Paragraph 88.b. (regarding waiver of claims against *de minimis* parties),
3 each of the Parties expressly reserves any and all rights (including, but not limited to, any right
4 to contribution), defenses, claims, demands, and causes of action which each Party may have
5 with respect to any matter, transaction, or occurrence relating in any way to the Site against any
6 person not a Party hereto.

7 90. Contribution Protection as to Settling Defendants

8 a. The Parties agree, and by entering this Consent Decree this Court finds, that the
9 Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions
10 or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for Matters
11 Addressed as to Claims against Settling Defendants, as defined in this Consent Decree, provided
12 that, in the event the CSDG does not receive the full amount of its agreed share of the proceeds
13 from the sale of the Springridge Property as provided for in the Confidential CSDG/Settling
14 Defendants Agreement, such protection shall not apply to the CSDG's action against Settling
15 Defendants for contribution and/or recovery of response costs at the Site pursuant to CERCLA,
16 the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.101-.1305, other statutes or
17 common law.

18 b. The Settling Defendants agree that with respect to any suit or claim for contribution
19 brought by them for matters related to this Consent Decree, they will notify the United States in
20 writing no later than sixty (60) days prior to the initiation of such suit or claim.

21 c. The Settling Defendants also agree that with respect to any suit or claim for

1 contribution brought against them for matters related to this Consent Decree they will notify in
2 writing the United States within ten (10) days of service of the complaint on them. In addition,
3 Settling Defendants shall notify the United States within ten (10) days of service or receipt of
4 any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court
5 setting a case for trial.

6 91. Contribution Protection as to Successors in Interest or Assigns

7 a. The Parties hereto agree that any Successor in Interest or Assign is entitled to
8 protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42
9 U.S.C. § 9613(f)(2) for Matters Addressed as to Claims against Successors in Interest or
10 Assigns, as defined in the Consent Decree, provided all of the following additional conditions
11 are satisfied: (1) that prior to Closing of the Sale of the Springridge Property, the Chemclene
12 Property, and/or the Ruth Balderston Site Property, the Successor in Interest or Assign agrees to,
13 and duly executes and submits to EPA, with proof of delivery, the attached Agreement and
14 Certification of Successor in Interest or Assign in Appendix "C" to this Consent Decree, for
15 execution by EPA; (2) that prior to the Closing of the Sale of the Springridge Property, the
16 Chemclene Property, and/or the Ruth Balderston Site Property, EPA duly executes the notice
17 and agreement in Appendix "C" submitted by the Successor in Interest or Assign; and (3) that
18 at the time of the Closing of the Sale of the Springridge Property, the Chemclene Property,
19 and/or the Ruth Balderston Site Property, all amounts due at Closing under this Consent Decree
20 have been paid in full. Contribution Protection provided for in this Paragraph does not extend
21 to any other person.

b. The Successor in Interest or Assign agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree or the Successor Agreement, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

c. The Successor in Interest or Assign also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree or the Successor Agreement, it will notify in writing the United States within 10 days of service of the complaint on them.

92. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the United States' covenants not to sue Settling Defendants as set forth in Section XIV.

XIX. ACCESS TO INFORMATION

93. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree relating to response activities at the Site.

1 94. a. Settling Defendants may assert business confidentiality claims covering part or
2 all of the documents or information submitted to Plaintiffs under this Consent Decree to the
3 extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. §
4 9604(e)(7), or 40 C.F.R. Part 2, Subpart B. Documents or information determined to be
5 confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If
6 no claim of confidentiality accompanies documents or information when they are submitted to
7 EPA, or if EPA has notified Settling Defendants that the documents or information are not
8 confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given
9 access to such documents or information without further notice to Settling Defendants.
10 However, no documents, reports or other information created or generated pursuant to the
11 requirements of this Consent Decree and required to be produced under the provisions of this
12 Consent Decree, shall be withheld on the grounds that they are privileged.

13 b. The Settling Defendants may assert that certain documents, records and other
14 information are privileged under the attorney-client privilege or any other privilege recognized
15 by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents,
16 they shall provide the Plaintiff with the following: (1) the title of the document, record, or
17 information; (2) the date of the document, record, or information; (3) the name and title of the
18 author of the document, record, or information; (4) the name and title of each addressee and
19 recipient; (5) a description of the contents of the document, record, or information: and (6) the
20 privilege asserted by Settling Defendants.

21 95. No claim of confidentiality shall be made with respect to any data, including, but not

1 limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
2 engineering data, or any other documents or information evidencing conditions at or around the
3 Site.

4 **XX. CERTIFICATION**

5 96. By signing this Consent Decree, Settling Defendants certify that, to the best of their
6 knowledge and belief, they have:

7 a. Conducted a thorough, comprehensive, good faith search for documents or
8 information, and have fully and accurately disclosed to EPA, all documents or information
9 currently in their possession, or in the possession of their officers, directors, employees,
10 contractors or agents, which relates in any way to the ownership, operation or control of the Site,
11 or to the ownership, possession, generation, treatment, transportation, storage or disposal of a
12 hazardous substance, pollutant, or contaminant at or in connection with the Site;

13 b. Not altered, mutilated, discarded, destroyed or otherwise disposed of any
14 documents or information relating to their potential liability regarding the Site after notification
15 of potential liability or the filing of a suit against them regarding the Site; and

16 c. Fully complied with any and all EPA requests for information regarding the
17 Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

18 **XXI. RETENTION OF RECORDS**

19 97. Until ten (10) years after the Effective Date of this Consent Decree, each Settling
20 Defendant shall preserve and retain all non-identical copies of records and documents (including
21 records or documents in electronic form) now in its possession or control or which come into its

1 possession or control that relate in any manner to its liability under CERCLA with respect to the
2 Site. In addition, Settling Defendants must retain all documents and records that relate to the
3 liability of any other person under CERCLA with respect to the Site.

4 98. At the conclusion of this document retention period, Settling Defendants shall notify
5 the United States at least ninety (90) days prior to the destruction of any such records or
6 documents, and, upon request by the United States, Settling Defendants shall deliver any such
7 records or documents to EPA. If the United States has not responded to Settling Defendants'
8 notice prior to the time Settling Defendants intend to destroy the records or documents, Settling
9 Defendants shall deliver all such records and documents to EPA no earlier than ten (10) days
10 after providing an additional written notice that such records and documents will be delivered,
11 unless EPA provides otherwise after receiving such notice. The Settling Defendants may assert
12 that certain documents, records and other information are privileged under the attorney-client
13 privilege or any other privilege recognized by federal law. If the Settling Defendants assert such
14 a privilege, they shall provide the United States with the following: (1) the title of the
15 document, record, or information; (2) the date of the document, record, or information; (3) the
16 name and title of the author of the document, record, or information; (4) the name and title of
17 each addressee and recipient; (5) a description of the subject of the document, record, or
18 information; and (6) the privilege asserted by Settling Defendants.

19 **XXII. NOTICES AND SUBMISSIONS**

20 99. Whenever, under the terms of this Consent Decree, written notice is required to be
21 given or a report or other document is required to be sent by one Party to another, it shall be

1 directed to the individuals at the addresses specified below, unless those individuals or their
2 successors give notice of a change to the other Parties in writing. All notices and submissions
3 shall be considered effective upon receipt, unless otherwise provided. Written notice as
4 specified herein shall constitute complete satisfaction of any written notice requirement of the
5 Consent Decree with respect to the United States, EPA, the CSDG, and the Settling Defendants,
6 respectively.

7 As to the United States:

8 Chief, Environmental Enforcement Section
9 Environment and Natural Resources Division
10 U.S. Department of Justice
11 P.O. Box 7611
12 Washington, D.C. 20044-7611
13 Re: DOJ # 90-11-3-1731

14 and

15 Joan A. Johnson
16 Senior Assistant Regional Counsel (3RC41)
17 United States Environmental Protection Agency
18 Region III
19 1650 Arch Street
20 Philadelphia, PA 19103

21 As to EPA:

22 Linda Dietz
23 EPA Project Coordinator
24 United States Environmental Protection Agency
25 Region III
26 1650 Arch Street
27 Philadelphia, PA 19103

28 As to the CSDG:

29 Mark A. Stevens, Esquire

1 Langsam Stevens & Silver LLP
2 1616 Walnut Street, Suite 812
3 Philadelphia, PA 19102

4 As to the Settling Defendants:

5 W. Lloyd Balderston, President
6 Chemclene Corporation
7 258 N. Phoenixville Pike
8 Malvern, PA 19355

9 –with a copy to–

10 Paul Boni, Esquire
11 Law Offices of Paul Boni, P.C.
12 Constitution Place, Suite 1109
13 325 Chestnut Street
14 Philadelphia, PA 19106

15 **XXIII. EFFECTIVE DATE**

16 100. The effective date of this Consent Decree shall be the date upon which this Consent
17 Decree is entered by the Court, except as otherwise provided herein.

18 **XXIV. RETENTION OF JURISDICTION**

19 101. This Court retains jurisdiction over both the subject matter of this Consent Decree
20 and the Settling Defendants for the duration of the performance of the terms and provisions of
21 this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any
22 time for such further order, direction, and relief as may be necessary or appropriate for the
23 construction or modification of this Consent Decree, or to effectuate or enforce compliance with
24 its terms, or to resolve disputes in accordance with Section XIII (Dispute Resolution) hereof.

25 **XXV. APPENDICES**

26 102. The following appendices are attached to and incorporated into this Consent Decree:

Appendix "A" is the Map of the Site

Appendix "B" is the ROD

Appendix "C" is the Agreement and Certification of Successor in Interest or Assign

Appendix "D" is the Description of the Chemcene Property

Appendix "E" is the Description of the Ruth Balderston Collateral Property

Appendix "F" is the Description of the Ruth Balderston Site Property

Appendix "G" is the Description of the Springridge Property

Appendix "H" is the Notice of Use Restrictions relating to the Springridge Property and the Ruth Balderston Site Property

Appendix "I" is the Ruth Balderston Collateral Property Mortgage and Promissory Note

Appendix "J" is the Easement relating to the Chemcene Property

XXVI. MODIFICATION

103. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, the CSDG, the Settling Defendants, and the Court.

XXVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

104. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or

1 inadequate. Settling Defendants consent to the entry of this Consent Decree without further
2 notice.

3 105. If for any reason the Court should decline to approve this Consent Decree in the
4 form presented, this agreement is voidable at the sole discretion of any Party and the terms of
5 the agreement may not be used as evidence in any litigation between the Parties.

6 **XXVIII. SIGNATORIES/SERVICE**

7 106. Each undersigned representative of a Settling Defendant to this Consent Decree, the
8 CSDG, and the Assistant Attorney General for the Environment and Natural Resources Division
9 of the Department of Justice certifies that he or she is fully authorized to enter into the terms and
10 conditions of this Consent Decree and to execute and legally bind such Party to this document.

11 107. Each Settling Defendant and the CSDG hereby agree not to oppose entry of this
12 Consent Decree by this Court or to challenge any provision of this Consent Decree unless the
13 United States has notified the Settling Defendants and the CSDG in writing that the United
14 States no longer supports entry of the Consent Decree.

15 108. Each Settling Defendant and the CSDG shall identify, on the attached signature
16 page, the name, address, and telephone number of an agent who is authorized to accept service
17 of process by mail on behalf of that Party with respect to all matters arising under or relating to
18 this Consent Decree. Settling Defendants and the CSDG hereby agree to accept service in that
19 manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of
20 Civil Procedure and any applicable local rules of this Court, including, but not limited to,
21 service of a summons.

XXIX. FINAL JUDGMENT

109. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that with respect to the settlement between the United States and Settling Defendants, as set forth in this Consent Decree, there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the CSDG, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED, THIS _____ DAY OF _____, 2005.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Chemclene, et al., relating to the Malvern TCE Superfund Site.

FOR THE UNITED STATES OF AMERICA

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

1
2 BRUCE GELBER
3 Section Chief
4 Environmental Enforcement Section

5
6 W. BENJAMIN FISHEROW
7 Deputy Section Chief
8 Environmental Enforcement Section

9
10 ROBERT E. LEFEVRE
11 Attorney
12 Environmental Enforcement Section
13 P.O. Box 7611
14 Washington, D.C. 20044-7611
15 (202) 616-8860
16 Fax: (202) 616-6583
17

NURIYE UYGUR
Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street
Philadelphia, PA 19106

1
2 DONALD S. WELSH
3 Regional Administrator, Region III
4 U.S. Environmental Protection Agency
5 1650 Arch Street
6 Philadelphia, PA 19103
7

8
9 WILLIAM C. EARLY
10 Regional Counsel
11 U.S. Environmental Protection Agency, Region III
12 1650 Arch Street
13 Philadelphia, PA 19103

14
15 JOAN A. JOHNSON
16 Senior Assistant Regional Counsel
17 U.S. Environmental Protection Agency, Region III
18 1650 Arch Street
19 Philadelphia, PA 19103

1 FOR _____ COMPANY, INC.:*

3 _____
4 *[Signature]*

5 *Please Type the Following:*

6 Name: _____

7 Title: _____

8 Address: _____

9 **Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

10 *Please Type the Following:*

11 Name: _____

12 Title: _____

13 Address: _____

14 Telephone: _____
15
16

17 _____
18 */ A separate signature page must be signed by each corporation, individual or other legal
19 entity that is settling with the United States.

**AGREEMENT AND CERTIFICATION OF SUCCESSOR
IN INTEREST OR ASSIGN**

I. INTRODUCTION

1. The Property covered by this Agreement and Certification of Successor in Interest or Assign ("Agreement and Certification") is part of the Malvern TCE Superfund Site ("Site").

A description of the Property is set forth in Appendix "A" of this Agreement.

2. Pursuant to a Consent Decree that was entered by the United States District Court for the Eastern District of Pennsylvania on December 13, 1999 (United States v. Action Manufacturing, et al., Civil Action No. 99-4402)("Remedial Action Consent Decree"), approximately 35 corporate parties ("Remedial Action Settlers") agreed to fund and perform, under oversight of the United States Environmental Protection Agency ("EPA"), cleanup of the Site. The remedy to be performed by the Remedial Action Settlers is described in a Record of Decision signed by EPA on November 26, 1997. As defined in the Remedial Action Consent Decree, the ROD includes any ROD amendments or Explanations of Significant Differences. Remedial Action Settlers have commenced performance of their obligations pursuant to the Remedial Action Consent Decree.

3. The purpose of this Agreement and Certification, among other things, is to provide that a subsequent purchaser of the Property is aware of the legal status of the Site and the remedial activities to be undertaken in connection with the Site; to ensure that access and institutional controls are maintained in support of Site remediation; and to provide a subsequent purchaser of the Property with a covenant not to sue by the United States and contribution protection pursuant to the Comprehensive Environmental Response, Liability and Compensation

Act, as amended, 42 U.S.C. § 9601, et seq., to the extent provided by this Agreement.

II. GENERAL PROVISIONS

4. The attached Consent Decree, in United States v. Chemclene Corp., et al., Civil Action No. 99-CV-3715 (United States District Court for the Eastern District of Pennsylvania) (“Consent Decree”), is incorporated by reference herein.

5. The Definitions contained in Section IV of the Consent Decree shall apply to this Agreement and Certification.

6. The undersigned Successor in Interest or Assign (“Successor”) hereby provides notice to the EPA of its intent to acquire a right, title or interest in the Settling Defendants’ Property.

III. COMPLIANCE WITH CONSENT DECREE AND OTHER OBLIGATIONS

7. The undersigned Successor agrees to be bound in the same manner as Settling Defendants by the following provisions of the attached Consent Decree, the effect of which require, at a minimum, the Successor who executes this Agreement and Certification to provide access to the Property and cooperate with all government units, contractors, and other persons performing response actions at the Property:

- a. Section X (Access/Institutional Controls);
- b. Section XII (Due Care/Cooperation). The undersigned Successor or Assign agrees that it shall be bound in the same manner as Settling Defendants by Section XII (Due Care/Cooperation) of the Consent Decree, except that the Successor’s obligation to exercise due care shall be with respect to Existing Contamination only;
- c. The specific agreements and obligations set forth in Section XVII (Covenants

by Settling Defendants).

The undersigned Successor further agrees that any development of the Property by such Successor will be in accordance with all law, including, where applicable, State, County, and local zoning and planning rules and regulations that have the force of law. Notwithstanding the previous sentence, any buyer shall have the right to use lawful means to challenge or seek a change in any of the applicable zoning and planning rules and regulations.

IV. CERTIFICATIONS

8. The undersigned Successor hereby certifies that it has not caused or contributed to a release or threat of a release of hazardous substances to, at or from the Site and that it is not subject to potential liability under CERCLA and/or any other law for Existing Contamination, unless it has otherwise resolved its potential liability for Existing Contamination at the Site pursuant to an administrative agreement or a judicial consent decree with the United States, including EPA.

V. COVENANT NOT TO SUE BY THE UNITED STATES AND EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

9. The undersigned Successor understands and agrees that the covenant not to sue set forth in Paragraph 79 of Section XV, and the contribution protection set forth in Paragraph 91 of Section XVIII, of the attached Consent Decree, respectively, will apply only if Settling Defendants satisfy their payment obligations to the United States pursuant to Paragraphs 8 and 9 of the Consent Decree either by: (i) paying to the United States at the time of Closing all amounts due at Closing pursuant to Paragraph 9(a) of the Consent Decree; or (ii) paying the lump sum payment to the United States pursuant to Paragraphs 9(b) and 13 of the Consent Decree.

Performance by the Settling Defendants of the foregoing must be met prior to the Successor's acceptance of a right, title or interest in the Property from Settling Defendants or their heirs.

10. The covenant not to sue provided by the United States to the undersigned Successor shall be subject to those reservations as provided in Paragraph 81 of Section XV of the Consent Decree.

VI. COVENANT NOT TO SUE BY SUCCESSOR

11. In consideration of the Covenant not to Sue by the United States in Paragraph 79 of Section XV of the Consent Decree, the undersigned Successor hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to: the Site, the Consent Decree, or this Agreement and Certification, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, or 9613, or any other provision of law; any claim against the United States, including any department, agency or instrumentality of the United States under Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, related to the Site; or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

12. Notwithstanding Paragraph 11, immediately above, the Successor reserves, and this Agreement and Certification is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (including its authorized officers, employees, or representatives), not including oversight or approval of the Successor's plans or

activities, that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

13. The covenants not to sue set forth in Paragraph 11, above, shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservation described in Paragraph 81 of Section XV of the Consent Decree, and as referred to in Paragraph 10 of this Agreement and Certification, but only to the extent that the Successor's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

14. Nothing in the Agreement and Certification shall be construed to create any rights in, or grant any cause of action to, any person not a party to the Agreement and Certification. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to the Agreement or Certification may have under applicable law. Successor expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

VII. TRANSFERABILITY OF AGREEMENT AND CERTIFICATION

15. Notwithstanding any other provisions of this Agreement and Certification, all of the rights, benefits, and obligations conferred upon the Successor under this Agreement and Certification may be assigned or transferred to any person with the prior written consent of EPA, which shall not be unreasonably withheld.

VIII. AUTHORITY TO CONSENT

16. This Agreement and Certification shall be binding upon the United States, and shall be binding on the Successor and its heirs, successors, assigns, commissioners, officers, director, employees, and agents. Each signatory of a party to this Agreement and Certification represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and Certification and to legally bind such party.

VIII. EFFECTIVE DATE

17. This Agreement and Certification of Successor shall be effective upon the execution by EPA and the undersigned Successor, and shall be binding in all respects upon such Successor.

18. Pursuant to Paragraphs 79 of Section XV and 91.a. of Section XVIII of the attached Consent Decree, each Successor must execute this Agreement and Certification providing written consent to be bound by terms of the Consent Decree, as set forth in Paragraph 7 of this Agreement and Certification, and the United States must accept this Agreement and Certification in order for the covenant not to sue and contribution protection to apply to that person. This signed Agreement and Certification shall be sent to the EPA Region III Office of Regional Counsel by such Successor within 10 days after the execution of such Agreement and Certification by the Successor.

IX. SCOPE OF THIS AGREEMENT AND CERTIFICATION

19. Nothing in this Agreement and Certification is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or equity, which the United States may have against any person, firm, corporation,

or other entity not a party to this Agreement and Certification.

X. NOTICES AND SUBMISSIONS

20. a. Notices and submissions required by this Agreement and Certification shall be sent to:

For EPA:

Joan A. Johnson (3RC41)
Assistant Regional Counsel
Office of the Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

For Settling Defendants:

Paul Boni, Esq.
Law Offices of Paul Boni, P.C.
Constitution Place, Suite 1109
325 Chestnut Street
Philadelphia, PA 19106

b. Copies of any notices and submissions referred to in Paragraph 20.a. of this Agreement and Certification shall be sent to :

For the Chemclene Site Defense Group:

Larry Silver, Esq.
Langsam Stevens & Silver LLP
1616 Walnut Street, Suite 1700
Philadelphia, PA 19103

XI. JURISDICTION

21. The undersigned Successor submits itself to the jurisdiction of the court for enforcement of the Consent Decree and this Agreement and Certification.

IT IS SO AGREED BY THE UNDERSIGNED SUCCESSOR IN INTEREST OR ASSIGN:

By: _____
Name/Title

Date: _____

APPROVED AND CONSENTED TO:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: _____
Name/Title

Date: _____